Supreme Court, U. S.
FILED
JUN 7 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 75-1682

October Term, 1975

WILSON FREIGHT FORWARDING COMPANY,
a/k/a WILSON FREIGHT COMPANY,
Petitioner,

v.

GORDON BAUGHMAN,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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On Writ of Certiorari to the United States
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RESPONDENT BAUGHMAN'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Opinions Below

The Opinions of the Court of Appeals for the Third Circuit were filed February 18, 1976 and are set forth in full in the Appendix A of Petitioner Wilson's Petition for a Writ of Certiorari beginning at page 14. The Opinion of the United States

District Court for the Western District of Pennsylvania is set forth in full in the Appendix B of Petitioner Wilson's Petition for a Writ of Certiorari beginning at Page 27. The District Court Opinion is also reported at 391 F. Supp. 671 (W.D. Pa. 1975).

Jurisdiction

The Opinion and judgment of the United States Court of Appeals for the Third Circuit was filed on February 18, 1976; rehearing was denied on March 10, 1976. The jurisdiction of the Supreme Court of the United States to review the Judgment of the United States Court of Appeals for the Third Circuit by Writ of Certiorari is conferred by 28 U.S.C., Section 1254 (1).

Statutes Involved

The statutory provisions involved are the Sherman Act, 15 U.S.C. Section 1; the Clayton Act, 15 U.S.C. Section 15.

Questions Presented

Did the Federal District Court err in denying the Petitioner Wilson's (Defendant in the District Court) motion for judgment N.O.V.?

NOTE: It is contended that Petitioner Wilson states in a misleading manner, the questions presented for review as follows: (See Pages 2 and 3 of the Petition for Writ of Certiorari).

"Questions Presented for Review

Whether the decision the United States Court of Appeals for the Third Circuit is in conflict with the decisions of other Courts of Appeals and the United

States Supreme Court on the sufficiency of proof required to establish an anti-trust conspiracy, specifically.

Whether a plaintiff may prove a conspiracy to boycott his services solely through alleged declarations of accused co-conspirators without any other independent evidence of the conspiracy?" (underlining supplied)

Counter Statement of the Case

Respondent-Plaintiff Baughman takes issue with the following statement in Petitioner Wilson's "Statement of the Case": (See page 5 of Petitioner Wilson's Petition for a Writ of Certiorari)

"The basis for Wilson's Motion for Judgment N.O.V. and appeal from the denial thereof to the Court of Appeals for the Third Circuit was the sufficiency of proof put forth by plaintiff to establish an anti-trust conspiracy. Wilson contended that plaintiff attempted to prove a conspiracy to boycott his services solely through alleged declarations of accused co-conspirators without any other independent evidence of the conspiracy." (underlining supplied)

The Statement of the Issues Presented for Review in the United States Court of Appeals for the Third Circuit was as follows: (See Page 2 of Wilson's Brief which was presented to the United States Court of Appeals in the course of arguing this case.)

"Statement of the Issues Presented for Review.

1. Whether, at the time of defendant Wilson's Motion for Summary Judgment, plaintiff had disclosed specific facts which raised a triable issue of defendant Wilson's participation in a conspiracy?

Answered in the affirmative by the Court below.

2. Whether there was properly admitted evidence from which an inference could be drawn that defendant

Wilson was part of a conspiracy or combination in restraint of trade to blacklist or boycott plaintiff's services in violation of the anti-trust laws?

Answered in the affirmative by the Court below.

3. Whether the Court in an anti-trust action against three defendants may speculatively remold the jury verdict by apportioning it between defendants and over differing time periods so as to deduct only partially the settlement amounts of two defendants from the trebled jury verdict against the remaining defendant Wilson?

Answered in the affirmative by the Court below."

The issue is now raised by Petitioner Wilson is different from the issues that were raised before the Trial Court of Appeals for the Third Circuit.

It is true that Petitioner Wilson before the United States Court of Appeals discussed the admissibility of the testimony of employees of alleged co-conspirators (Page 17 of Wilson's Court of Appeals Brief, Part III-A), and the alleged lack of threshold evidence of a conspiracy independent of the evidence of the alleged declarations of co-conspirators, (Page 19 of Wilson's Court of Appeals Brief, Part III-B), but Petitioner in this same Brief discussed other evidentiary issues in addition to the co-conspirator exception to the hearsay rule.

In fact, the Petitioner Wilson's Brief before the United States Court of Appeals recognized that there was substantial independent evidence other than co-conspirator testimony by discussing the admissibility of the damaging admission against interest testimony of Wilson's employee, Claire Umberger, (page 24 of Wilson Court of Appeals Brief, Part III-C) and by discussing the state of mind evidenced by the statement of Clarence Frankel and admitted by the Trial Court as a state of mind exception to the hearsay rule rather than on the basis that the statement was one of a co-conspirator (Page 30 of Wilson's Court of Appeals Brief, Part III-D).

The Wilson statement of the case in the Petition for Writ of Certiorari wrongfully suggests that there was no evidence submitted to the Trial Court, except co-conspirator exception to the hearsay rule evidence, which is certainly far from being the case.

Reasons Why the Writ Should not be Granted

Petitioner Wilson's Petition For Writ of Certiorari should be refused. As indicated in Respondent-Plaintiff Baughman's Counter-Statement of this case, Petitioner Wilson at no time in the District Court or before the Court of Appeals, "...contended (as it now does), that Plaintiff attempted to prove a conspiracy to boycott his services solely through alleged declarations of accused co-conspirators without any other independent evidence of the conspiracy." (Page 3 of Wilson's Petition for Writ of Certiorari) (underlining supplied).

Further, even assuming that Petitioner Wilson had properly raised the issue that Plaintiff's evidence was *solely* from accused co-conspirators in the Courts below, the statement of Petitioner Wilson that Plaintiff attempted to prove a conspiracy to boycott his (Plaintiff's) services solely through alleged declarations of accused co-conspirators without any other independent evidence of the conspiracy, is a totally false statement.

The statement of the "Questions Presented for Review" by Petitioner Wilson is likewise grossly misleading. The only evidence that was admitted on the ground that it was the declaration of an accused co-conspirator, and hence was evidence admissible only as a co-conspirator exception to the hearsay rule, was certain statements made by Randy Clark, Manager of one of the original Defendants' (Matlack, Inc.) Terminal at Adamsburg, Pennsylvania. Contrary to what the Petition of Wilson suggests, there was sufficient additional evidence linking the Defendant Wilson to the conspiracy, all

of which was admitted on grounds other *than under the co-conspirator exception to the hearsay rule.* None of the other evidence, which was substantial and admitted by the District Court at the time of trial to prove Petitioner-Defendant Wilson's participation in the conspiracy to blacklist Plaintiff, was admitted as the declarations of accused co-conspirators of Defendant Wilson.

The Federal District Court properly treated the co-conspirator statement of Randy Clark as an exception to the hearsay rule, as follows: (See pages 28, 39 and 40 of Petitioner Wilson's Petition for Writ of Certiorari Appendix B—Opinion of the United States District Court)

> "Finally, Wilson objects to the introduction of certain alleged statements by Randy Clark, Manager of the Matlack Inc. terminal at Adamsburg, Pennsylvania. Tony Stanrajh, an over-the-road truck driver, for Matlack, testified that after being fired from Cooper-Jarrett the plaintiff requested Stanrajh to speak with Clark about hiring the plaintiff. Stanrajh further testified that even though Matlack was hiring other people and even though Clark earlier had praised the plaintiff's driving ability, Clark told him: '. . . he (Clark) couldn't put him (plaintiff) on right now even if he was his own brother, and that, he says, anyway, the word was out from Cooper-Jarrett that he better not hire him because he would just probably make trouble at the terminal . . .' (Trans. No. 1 at p. 133). The jury could well have concluded from this statement that Cooper-Jarrett had contacted Matlack in an effort to deny the plaintiff employment."
>
> "The defendant argues that the statement was irrelevant and inadmissible because Clark did not mention Wilson Freight Company and, therefore, there is no basis for inference of an illicit conspiracy involving Wilson. The facts of this case are similar to those in *Flintkote Co. v. Lysfjord,* 246 F 2d 368 (9th cir 1957), a civil action under the Sherman Act in which the plaintiff settled with certain defendants prior to trial and proceeded

> against the remaining defendant which allegedly joined an existing conspiracy. The Ninth Circuit noted that the plaintiff had to establish both the prior existence of the conspiracy and the remaining defendant's subsequent connection with it before evidence of the acts or statements of alleged co-conspirators would be admissible against the defendant. We agree with that court that the trial court has broad discretion in the admission of evidence which tends to establish conspiracy and that the order of proof may be governed by the 'rule of convenience' 246 F 2d at 377. It is clear that the plaintiff introduced this statement by Clark to show the existence of an on-going conspiracy involving Cooper-Jarrett and Matlack. When coupled with statements of Claire Umberger, which we have held to be admissible as admissions by Wilson, the plaintiff has produced sufficient evidence for the jury to find that Wilson joined an existing conspiracy to blacklist the plaintiff."
>
> "The defendant also argues that Clark's statement introduced through Stanrajh was inadmissible hearsay because it did not fall within the co-conspirator exception to the hearsay rule. In *Glasser v. United States,* 315 US 60, 86 L Ed 680 (1942), the Supreme Court stated that under the co-conspirator doctrine the declarations of one conspirator in furtherance of the objects of the conspiracy made to a third party are admissible against his co-conspirators. The court noted, however, that such declarations are admissible over the objection of an alleged co-conspirator, who was not present when they were made, only if there is proof aliunde that he is connected with the conspiracy. 315 US at 74. 86 L Ed at 701. See also *Todhunter-Mitchell & Co., Ltd. v. Anheuser-Busch, Inc.,* 375 FS 610 (E.D. Pa. 1974). The purpose for the rule requiring independent evidence of a conspiracy is to prevent otherwise inadmissible hearsay to lift itself by its own bootstraps to the level of competent evidence merely by implicating the objecting party as a co-conspirator. We find, however, that the statements by Frankel of Cooper-Jarrett and Umberger of Wilson, which are admissible under other exceptions to the

hearsay rule, provide sufficient proof aliunde that a conspiracy existed to permit Clark's statement to be admissible under the co-conspirator exception."

"In the light of the foregoing, the court holds that there was sufficient evidence if believed by the jury, to fasten liability upon defendant Wilson."

The United States Court of Appeals has twice reviewed this case and has unanimously concluded that there is no basis for setting aside the jury's liability determination against Petitioner Wilson.

The Federal District Court, after reviewing the transcript of the trial record, specifically found that there was other legally admissible evidence of the conspiracy to blacklist the Plaintiff-Respondent Baughman, in addition to the evidence which was admitted by the District Court as falling within the co-conspirator exception to the hearsay rule. (Randy Clark's testimony which was discussed above).

The statements of Claire Umberger, the Relay Supervisor and local manager for Defendant Wilson; and the statements of Clarence Frankel, a vice-president of co-conspirator Cooper-Jarrett were properly admitted by the Court below, but not as statements of co-conspirators. The District Court below treated these statements in its Opinion as follows: (See pages 34, 35, 36 and 37 of Petitioner Wilson's Petition for Writ of Certiorari Appendix B—Opinion of United States District Court).

"The plaintiff's contention in this case was that after firing the plaintiff, Cooper-Jarrett, Inc., enlisted other trucking companies in a common effort to prevent the man from obtaining further employment. The evidence produced at trial showed that the plaintiff was employed as an over-the-road truck driver by Cooper-Jarrett until he was fired on October 23, 1970. The plaintiff testified that when he was fired, Clarence Frankel, a Vice-President of Cooper-Jarrett, stated: "He (plaintiff) will not drive any of Cooper-Jarrett's trucks ever again nor will he drive for any other freight company" (Trans. No. 1 at Page 17).

"Wilson argues that this statement constitutes inadmissible hearsay which does not fall within the co-conspirator exception because it was made before any conspiracy could have begun. While we agree that there may not have been two or more conspirators involved at that point in time, Frankel's statement falls within another exception to the hearsay rule. A person's declaration of intent to perform an act is admissible as tending to show that the act was in fact carried out as planned. See *Mutual Life Insurance Co. v. Hillman,* 145 US 285, 36 L Ed 706 (1892); *Blackburn v. Aetna Freight Lines, Inc.,* 368 F 2d 345 (3rd cir 1966) (dictum); *United States v. Annunziato,* 293 F 2d 373 (2d cir), cert. den 368 US 919, 7L Ed 2d 134 (1961); *Nuttall v. Reading Co.,* 234 F 2d 546 (3d cir 1956); *Commonwealth v. Santos,* 275 Pa 515, 119 A 596 (1923). Accordingly, we find that Frankel's statement was relevant and admissible to prove that Cooper-Jarrett thereafter contacted Wilson and other trucking companies in an effort to blacklist the plaintiff."

"The defendant's second objection is to certain alleged statements by Claire Umberger who is the Relay Supervisor or local manager for Wilson Freight Company at the company's terminal in New Stanton, Pennsylvania. The evidence indicated that the plaintiff went to Wilson's New Stanton terminal and filed an application for employment on August 24, 1971. The plaintiff testified that when he returned about seven to ten days later to check on his application, Umberger stated: ". . . the word was out from Cooper-Jarrett that I (plaintiff) was blacklisted, that he (Umberger) could not hire me . . .." (Trans. No. 1 at p. 35). This testimony was corroborated by Ross Fiat who accompanied the plaintiff to the Wilson terminal.[1] The jury may well have inferred from this statement that Cooper-Jarrett had secured the cooperation of Wilson in its efforts to blacklist the plaintiff."

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[1] Although Fiat did not testify in person at the second trial, his testimony at the January 1974 trial was read into the record.

"The defendant argues that this declaration constitutes inadmissible hearsay because Umberger did not have actual authority to make a statement admissible against Wilson on the subject of a conspiracy. Wilson interprets the law too narrowly if it means to imply that the plaintiff must show that umberger was expressly authorized to inform the plaintiff that he was the target of an illegal conspiracy. Conspiracies are secretive by their very nature, and such a requirement would unduly burden their innocent victims from obtaining relief. Considering all the facts presented, we find that Umberger's statement falls within the admission of a party exception to the hearsay rule because it was made within the scope of his authority."

"In *Moran v. Pittsburgh-Des Moines Steel Co.*, 183 F 2d 467 (3d cir 1950), the third circuit stated that admissions made by an agent of a party are admissible when the agent's powers are broad enough to constitute him the general representative of the principal with broad managerial responsibilities. See also *Johnson v. Yost Lumber Co.*, 117 F 2d 53 (8th cir 1941) (statements of local lumber yard managers held admissible against defendant lumber companies in action to recover damages under Sherman Act for conspiracy to boycott the plaintiff). Umberger appears to have such broad managerial responsibility because he was the head man at the New Stanton terminal. According to his own testimony, Umberger was charged with the management of all personnel at the New Stanton terminal and was responsible for overseeing the movement of freight, inbound and outbound and for the preservation of property and equipment (Trans. No. 1 at 212-13). Umberger was more than a mere subordinate in the company; he was Wilson's manager on the scene at the new Stanton locality."

"The defendant claims that Umberger was only a middleman with respect to hiring and firing and refers to testimony by Umberger and James Mathias, Wilson's Vice-President of Operations, that applications were forwarded to the company's home office in Cincinnati, Ohio

where a final decision on hiring would be made. Even though the ultimate decision as to hiring may have been made in Cincinnati, Umberger still played a major role in that process. The undisputed evidence indicated that Umberger and his assistant, Roger Lewis, conducted a preliminary screening of all applications and retained all but those few which were forwarded to the home office. To the extent that certain applications were held at the New Stanton terminal, Umberger played a key role in denying those men employment."

"Even though Umberger may have not had the ultimate authority to hire drivers, he appears to have had either express or implied authority to tell an applicant whether or not he was hired and the reasons why. He was the manager of the local terminal and dealt directly with the applicants. As stated by James Mathias, as far as the average man seeking a job at the New Stanton terminal was concerned, Umberger was the man in charge of hiring (Trans. No. 1 at p. 274). Considering all the circumstances, we conclude that Umberger's statement that 'the word was out from Cooper-Jarrett' was made within the scope of his authority as Relay Supervisor or local manager at the New Stanton Terminal."

See Page 40 of Petitioner Wilson's Petition for Writ of Certiorari. Appendix B—"Opinion of the United States District Court for the Western District of Pennsylvania", where the District Court Judge says:

> "We find, however, that the statements by Frankel of Cooper-Jarrett and Umberger of Wilson, which are admissible under other exceptions to the hearsay rule, provide sufficient proof aliunde that a conspiracy existed to permit Clark's statement to be admissible under the co-conspirator exception". (Umberger was speaking as an agent of Defendant-Petitioner Wilson and not as a co-conspirator)

Likewise, the Court of Appeals reviewed the record of the trial below and stated:

> "We conclude that Baughman's testimony about Umberger's statement was properly admitted, and that there was evidence of Wilson's participation in the blacklisting conspiracy sufficient *to permit use against it of the admissions of co-conspirators made in furtherance of the conspiracy.*" (See page 18 of Petitioner Wilson's Petition For Writ of Certiorari, Appendix A—Opinions of the United States Court of Appeals for the Third Circuit.

And again, on Page 19 of Petitioner Wilson's Petition for Writ of Certiorari, the Court of Appeals said:

> "But the record contains other evidence of the existence of a conspiracy, and of the participation in it of Matlack and Wilson. That evidence included the statements made by Umberger, referred to above, and statements made by Matlack's terminal manager. Certainly Frankel's statement was admissible to show that Cooper-Jarrett intended to enlist the cooperation of others".

Further, it is important to note that the admissions of Petitioner-Defendant Wilson's agent-employee, Claire Umberger, (Umberger was speaking as an agent and not declaring as a co-conspirator at all), which clearly and independently connected Defendant Wilson to the blacklisting conspiracy, was corroborated by an independent witness, Ross Fait who was present and heard Wilson's agent, Umberger clearly connect his employer Wilson with blacklisting the Plaintiff Baughman (See Appendix B—Opinion of the United States District Court for the Western District of Pennsylvania, Page 35 of Petitioner Wilson's Petition for Writ of Certiorari).

Ross Fait and Claire Umberger were good witnesses for Plaintiff Baughman and their testimony was evidence that Wilson had conspired to blacklist the Plaintiff, but neither of these men were accused co-conspirators.

In addition to the threshold evidence of a conspiracy mentioned by the Trial Court, in the Opinion, it was testified to in the Plaintiff's case by Mathias, Vice-President of Defendant

Wilson, that after Plaintiff-Baughman had applied for work at Defendant Wilson's Terminal, (and Plaintiff was never hired at any time by Defendant Wilson), Wilson hired over twenty-one men thereafter, (Record in Second Trial, Vol. 1 Page 275), despite the fact that Plaintiff's record showed that he had driven over one million miles without a preventable accident (Record in Second Trial Vol. 1 Page 299) (Mathias was called by the Plaintiff as of cross-examination in Plaintiff's case-in-chief).

It is clear that there was sufficient proof aliunde, that Wilson was connected with the conspiracy to warrant the admission of Randy Clark's declaration which involved co-conspirator Matlack in the scheme to blacklist the Plaintiff.

Here again, Mathias was testifying as an employee-agent of Petitioner-Defendant Wilson and not as an accused co-conspirator.

Although the Petitioner Wilson now contends that the statements of the co-conspirators are the only evidence of a conspiracy, such is clearly not the case.

The record is clear that the Plaintiff testified directly that he applied for work with Defendant Wilson and Defendant Matlack, and although he was extraordinarily well-qualified, he was not hired; that twenty-one other employees of said Wilson were hired at a time subsequent to the Plaintiff's application for employment even though some of them were less qualified than Plaintiff; that the Plaintiff was refused employment by Matlack and Wilson; the statement of Clarence Frankel of Cooper-Jarrett that Plaintiff would never work for a freight company was a threat made and carried out by the Defendant; there were acts of conscious parallelism between Matlack and Wilson in carrying out the threats made by agents of Cooper-Jarrett to refuse Plaintiff employment as a truck driver. Damages resulting from the conspiracy to blacklist Plaintiff were clearly proved. The wages loss was

proved by testimony from proper witnesses, income tax records and the over-the-road Teamsters Contract.

Of all this evidence, only the testimony of Randy Clark was co-conspirator testimony. (Randy Clark testified that, "the word is out" from Cooper-Jarrett and that was the reason Plaintiff was not hired.)

It is clear that statements of a conspirator may be admissible in a conspiracy case against a co-conspirator on two alternate grounds. For an example a person's declaration of intent to perform an act is admissible and relevant to show that the act was probably done as planned; and as an alternative ground for admissibility, it could be held that the same statement could be admissible as a statement by a co-conspirator. It is clear, however, that although certain evidence may not be admissible under the co-conspirator statement rule because there is no proof aliunde of a conspiracy, that nevertheless the same evidence may be used in the conspiracy case as a person's declaration of an intent or state of mind to perform an unlawful act, and the declaration is admissible and relevant to show that the act was probably done as planned.

> See *United States v. Annunziato,* 293 F 2d 373 (2nd cir) cert. den. 368 U.S. 919, 7 L ed 2d 134 (1961)
>
> See also *Nuttall v. Reading Co.,* (3 cir) 235 F 2d 546 (1956) where the late Judge Goodrich notes that declaration of intention may also be used to establish, "Such other things as proof of a state of mind tends to establish."

It is apparent that declaration of Frankel, Vice President of co-conspirator Cooper-Jarrett was not admitted by the Court as a co-conspirator's declaration, but was admitted under the declaration of intent or state of mind exception to the hearsay rule only.

The Trial Court in its Opinion (Petitioner Wilson's Petition for Writ of Certiorari, Pages 34, 35) treats the matter as follows:

> "The Plaintiff's contention in this case was that after firing the Plaintiff, Cooper-Jarrett, Inc. enlisted other trucking companies in a common effort to prevent the man from obtaining further employment. The evidence produced at trial showed that the Plaintiff was employed as an over-the-road driver by Cooper-Jarrett until he was fired on October 23, 1970. The Plaintiff testified that when he was fired, Clarence Frankel, a Vice-President of Cooper-Jarrett, stated: 'He (plaintiff) will not drive any of Cooper-Jarrett's trucks ever again nor will he drive for any other freight company.' (Trans. No. 1 at page 17)."
>
> "Wilson argues that this statement constitutes inadmissible hearsay which does not fall within the co-conspirator exception because it was made before any conspiracy could have begun. While we agree that there may not have been two or more conspirators involved at that point in time, *Frankel's statement falls within another exceptions to the hearsay rule.* A person's declaration of intent to perform an act is admissible as tending to show that the act was in fact carried out as planned. See *Mutual Life Insurance Co. v. Hillman,* 145 U.S. 285, 35L Ed 706 (1892); *Blackburn v. Aetna Freight Lines, Inc.,* 368 F 2d 345 (3rd cir 1966) (dictum); *United States v. Annunziato,* 293 F 2d 373 (2d cir), cert. den., 368 U.S. 919, 7 L Ed 2d 134 (1961); *Nuttall v. Reading Co.,* 235 F 2d 546 (3d cir 1956); *Commonwealth v. Santos,* 275 Pa. 515, 119 A 596 (1923). Accordingly, we find that Frankel's statement was relevant and admissible to prove that Cooper—Jarrett thereafter contracted Wilson and other trucking companies in an effort to blacklist the Plaintiff."

There is no need for threshold evidence of a conspiracy in this situation where evidence is admitted under the intent or state of mind exception to the Hearsay Rule.

The Umberger statement in controversy was admitted into evidence as an admission against interest by an agent of Defendant Wilson and certainly was not and could not be treated as a statement of a co-conspirator.

The Court below in dealing with this declaration found that Wilson's employee, Umberger's statement, ". . . the word was out from Cooper-Jarrett . . ." was made within the scope of his authority as Relay Supervisor or local manager at the New Stanton Terminal and hence, was an admission against interest exception to the Hearsay Rule (See pages 34, 35, 36 and 37 of Petitioner Wilson's Petition for Writ of Certiorari Appendix B—Opinion of United States District Court).

Again, it is clear that there is no need for threshold evidence of a conspiracy before an admission against interest can be allowed into evidence.

In fact, as heretofore noted, the only declaration in the case at bar that came within the co-conspirator exception to the hearsay rule, and hence is subject to the requirement that there should be threshold evidence of a conspiracy is the alleged statement by Randy Clark, a manager for Co-conspirator Matlack, Inc.

Conclusion

Plaintiff-Respondent Baughman properly introduced enough evidence in this case to properly prove that Petitioner-Defendant Wilson engaged in a conspiracy to blacklist the Plaintiff and that the Plaintiff was damaged thereby.

Almost all of the evidence properly admitted by the Trial Court in this case was not admitted as an alleged declaration of an accused co-conspirator as wrongfully alleged in Petitioner Wilson's Petition for Writ of Certiorari.

The evidence of the Plaintiff that he was fired by Cooper-Jarrett and that he made applications for employment with Matlack, Wilson and others and was not hired even though he had a superior record as a driver, was documentary and eyewitness positive testimony.

The declarations of Matlack Employee Clark was properly admitted as the declaration of a co-conspirator exception to hearsay rule.

The declaration of Cooper-Jarrett Employee Frankel was properly admitted as a state of mind exception to the hearsay rule for the purpose of showing the existence of a design or plan to blacklist the plaintiff and that the act was probably done as planned.

The declarations of Wilson Employees Umberger and Mathias were properly admitted against Defendant Wilson as admissions against interest. Ross Fiat corroborated Plaintiff's testimony that the declarations were made.

There was much additional evidence of a conspiracy on the part of Defendant Wilson by Mr. Mathias, an employee of Wilson, who testified as of cross-examination.

In the only instance where threshold evidence was required, *i.e.* concerning the declaration of Matlack Employee Clark as a co-conspirator, there was more than sufficient threshold evidence to warrant the admission of his declaration. (See evidence listed above.)

Two different juries have found sufficient credible evidence to support a verdict for the Plaintiff and in each instance the Trial Court stated that it found good and sufficient evidence to sustain both verdicts, although a new trial was granted after the first trial for other reasons.

The Trial Court properly admitted all evidence in this case and there was sufficient evidence taking the view most favorable to the Plaintiff to support it.

See *Glasser Case,* cited *supra.*

The United States Court of Appeals for the Third Circuit has twice reviewed this matter after hearing oral Argument and reading briefs, and has sustained the Trial Court unanimously on the evidence questions.

The Petitioner Wilson's arguments are without merit. The Courts below have applied the law in this case in conformity with the principles laid down by your Supreme Court of the United States and there is no conflict between the holding of the Court of Appeals for the Third Circuit in this case and any other Federal appellate case. There is an abundance of evidence other than evidence which is admissible as a co-conspirator exception to the hearsay rule, to sustain the verdict of the jury in this case.

Further, it was proper to admit evidence of the declaration of an alleged co-conspirator under the co-conspirator exception to the hearsay rule.

The Judgment and Opinion of the United States Court of Appeals is correct in this case and the Defendant-Wilson's Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit should be denied.

Respectfully submitted,

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